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Supreme Court, U.S.
FILED

No. 00 924 OCT 10 2000

OFFICE OF THE CLERK

In The

Supreme Court of the United States

AUGUSTUS J. SIMMONS,

Petitioner,

vs.

STATE OF CONNECTICUT,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of The State of Connecticut

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

AUGUSTUS J. SIMMONS,
Petitioner
P.O. Box #1
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30 pp

STATE OF CONNECTICUT
CRIMINAL JUDGMENT FILE

DOCKET NO.: CR97-104930
STATE OF CONNECTICUT
v.

: SUPERIOR COURT
: J.D. OF HARTFORD
: AT G.A. 13, ENFIELD
: Sept. 2, 1998
(DATE)

Augustus Simmons
(NAME OF DEFENDANT

446 Main St. East
Hartford, CT
(ADDRESS OF DEFENDANT)

Upon the information and/or complaint of the Assistant State's Attorney for said Geographical Area court, the above-named defendant was presented before said court on 4/29/97 and charged with the crime(s) of:

COUNT	CRIME	STATUTE/ ORD. NUMBER
FIRST	Criminal Mischief 1st.degree	53a-115
SECOND	Criminal Trespass 3rd.	53a-109
THIRD	Tampering with Airport Property	15-69
FOURTH		

Said defendant was advised of his/her constitutional rights according to statute by the Hon. Mullarkey, a Judge of the Superior Court, on 4/29/97.

ATTEST:
CLERK OF COURT:
/s/ Lucy A. Spakauskas
Deputy Clerk

It appearing that said defendant should have counsel, the Office of the Public Defender was appointed by the Hon. _____ to represent the defendant and on _____ Public Defender _____ appeared for the defendant.

It appearing that said defendant was a minor, the following person was appointed Guardian ad Litem, by the Honorable _____, a Judge of the Superior Court.

NAME OF GUARDIAN: _____ of _____ (Town)

The defendant was called upon to answer said information/complaint on 5/13/97 and thereupon pleaded:

NOT GUILTY, to Count(s) No. 1, 2, and 3.

GUILTY, to Count(s) No. _____

NOLO CONTENDERE, IN WRITING, to Count(s) No. _____

That before the defendant was put to plea on Count(s) No. _____, (s)he was notified, in the absence of the Court, of the contents of a second part of the Information, charging said defendant with having been previously convicted of the crime(s) of: _____ on: _____ at: _____, Superior Court.

Whereupon, the Court advised the defendant of his/her constitutional right to a trial by the Court or by the Jury. That the defendant thereupon elected to be tried by the Court on the count(s) to which (s)he had pleaded not guilty. After a full hearing before the Hon. _____, commencing on _____ and concluding on _____, the Court found the defendant:

GUILTY, on Count(s) No. _____

NOT GUILTY, on Count(s) No. _____

GUILTY, ON THE LESSER INCLUDED OFFENSE, on Count(s) No. _____

That the defendant elected to be tried by a Jury, on the count(s) to which (s)he had pleaded not guilty. The defendant elected to be tried by a jury of six and the case was continued onto the Firm Jury Trial List for this Geographical Area. After a full hearing before the Hon. Harleston, commencing on 4/15/98, the case was committed to the jury which returned a verdict of:

- GUILTY, on Count(s) No.: 1, 2, 3 DATE: 6/5/98 TIME: 11:55 A.M.

  It was therefore adjudged by the Court that the defendant was guilty in manner and form as charged in said complaint/information on said counts.

  Whereupon, the defendant on 6/10/98 duly filed his/her motion to set aside the verdict. The Court, Harleston, J., having heard the parties on said motion, denied the same on 8/20/1998.

  NOT GUILTY, on Count(s) No.: _____ DATE: _____ TIME: _____

GUILTY, ON LESSER INCLUDED OFFENSE, on Count(s) No.: _____

The Court accepted and ordered recorded said verdict.

The Trial Court Judge (Harleston) thereafter deferred the imposition of the sentence on the defendant and ordered that the Adult Probation Department file the required pre-sentence report on or before 8/21/98.

The pre-sentence report having been filed and considered, the Court (Harleston, J.) sentenced the defendant to:

PAY A FINE OF $ _____ on Count(s) No. _____, respectfully, and to stand committed until judgment be complied with.

BE COMMITTED TO THE CUSTODY OF THE COMMISSIONER OF CORRECTIONS, on Count(s) No. 1 for 3 yrs. e/s/a 6 mos, 5 yrs. prob.

for a term of _____

at Hartford Correctional Center

EXECUTION OF SAID SENTENCE WAS SUSPENDED,

on Count(s) No. _____ after _____ day(s) /month(s) /year(s) are served on Count(s) No. _____ and the defendant was committed to the care of the Adult Probation Department for a period of _____ mths/yrs. on Count(s) No. _____

Count #2. 3 mos concurrent 5 yrs prob.

Count #3. 5 yrs. e/s/a 1 yr. 5 yrs. prob. consecutive

STATE OF CONNECTICUT
CRIMINAL JUDGMENT FILE

DOCKET NO.: CR97-105048
STATE OF CONNECTICUT
v.

: SUPERIOR COURT
: J.D. OF HARTFORD
: AT G.A. 13, ENFIELD
: Sept. 11, 1998
(DATE)

Augustus Simmons
(NAME OF DEFENDANT

446 Main St. East
Hartford, CT
(ADDRESS OF DEFENDANT)

Upon the information and/or complaint of the Assistant State's Attorney for said Geographical Area court, the above-named defendant was presented before said court on 4/29/97 and charged with the crime(s) of:

COUNT	CRIME	STATUTE/ ORD. NUMBER
FIRST	Ill Tamp Airport/ Equipment	15-69
SECOND	Criminal Trespass 1st	53a-107
THIRD	Interfere with Offcr/ Resisting	53a-167a
FOURTH		

Said defendant was advised of his/her constitutional rights according to statute by the Hon. Mullarkey, a Judge of the Superior Court, on 4/29/97.

ATTEST:
CLERK OF COURT:
/s/ L. Moncevicius, Asst. Clerk

It appearing that said defendant should have counsel, the Office of the Public Defender was appointed by the Hon. _____ to represent the defendant and on _____ Public Defender _____ appeared for the defendant.

It appearing that said defendant was a minor, the following person was appointed Guardian ad Litem, by the Honorable _____, a Judge of the Superior Court.

NAME OF GUARDIAN: _____ of _____ (Town)

The defendant was called upon to answer said information/complaint on 5/13/97 and thereupon pleaded:

NOT GUILTY, to Count(s) No. all counts

GUILTY, to Count(s) No. _____

NOLO CONTENDERE, IN WRITING, to Count(s) No. _____

That before the defendant was put to plea on Count(s) No. _____, (s)he was notified, in the absence of the Court, of the contents of a second part of the Information, charging said defendant with having been previously convicted of the crime(s) of: _____ on: _____ at: _____, Superior Court.

Whereupon, the Court advised the defendant of his/her constitutional right to a trial by the Court or by the

Jury. That the defendant thereupon elected to be tried by the Court on the count(s) to which (s)he had pleaded not guilty. After a full hearing before the Hon. _____, commencing on _____ and concluding on _____, the Court found the defendant:

GUILTY, on Count(s) No. _____

NOT GUILTY, on Count(s) No. _____

GUILTY, ON THE LESSER INCLUDED OFFENSE, on Count(s) No. _____

That the defendant elected to be tried by a Jury, on the count(s) to which (s)he had pleaded not guilty. The defendant elected to be tried by a jury of six and the case was continued onto the Firm Jury Trial List for this Geographical Area. After a full hearing before the Hon. Harleston, commencing on 4/15/98, the case was committed to the jury which returned a verdict of:

GUILTY, on Count(s) No.: all counts DATE: 6/5/98 TIME: 11:55 A.M.

It was therefore adjudged by the Court that the defendant was guilty in manner and form as charged in said complaint/information on said counts.

Whereupon, the defendant on 6/10/98 duly filed his/her motion to set aside the verdict. The Court, Harleston, J., having heard the parties on said motion, denied the same on 8/20/1998.

NOT GUILTY, on Count(s) No.: _____ DATE: _____ TIME: _____

GUILTY, ON LESSER INCLUDED OFFENSE, on Count(s) No.: _____

The Court accepted and ordered recorded said verdict.

The Trial Court Judge (Harleston) therafter deferred the imposition of the sentence on the defendant and ordered that the Adult Probation Department file the required pre-sentence report on or before 8/21/98.

The pre-sentence report having been filed and considered, the Court (Harleston, J.) sentenced the defendant to:

PAY A FINE OF $ _____ on Count(s) No. _____, respectfully, and to stand committed until judgment be complied with.

BE COMMITTED TO THE CUSTODY OF THE COMMISSIONER OF CORRECTIONS, on Count(s) No. all counts, see below for a term of _____

at _____

EXECUTION OF SAID SENTENCE WAS SUSPENDED,

on Count(s) No. _____ after _____ day(s) /month(s) /year(s) are served on Count(s) No. _____ and the defendant was committed to the care of the Adult Probation Department for a period of _____ mths/yrs. on Count(s) No. _____

* SENTENCED ON COUNT #1 TO 5 YRS.E/S/A 18 MOS., 5 YRS PROBATION

  SENTENCED ON COUNT # 2 TO 1 YR.E/S 3 YRS PROBATION, CONC

  SENTENCED ON COUNT # 3 TO 1 YR E/S 3 YRS PROBATION, CONC.

FOR A TES OF 8 YRS E/S/A 18 MOS. TO SERVE. 5 YRS. PROBATION

STATE OF CONNECTICUT
CRIMINAL JUDGMENT FILE

DOCKET NO.: CR97-106221
STATE OF CONNECTICUT
v.

: SUPERIOR COURT
: J.D. OF HARTFORD
: AT G.A. 13, ENFIELD
: September 11, 1998
(DATE)

Augustus J. Simmons
(NAME OF DEFENDANT

446 Main St. East
Hartford, CT
(ADDRESS OF DEFENDANT)

Upon the information and/or complaint of the Assistant State's Attorney for said Geographical Area court, the above-named defendant was presented before said court on 8/8/97 and charged with the crime(s) of:

COUNT	CRIME	STATUTE/ ORD. NUMBER
FIRST	Criminal Mischief 2nd.	53a-116
SECOND	Ill Tamper Airport/ Equipment	15-69
THIRD		
FOURTH		

Said defendant was advised of his/her constitutional rights according to statute by the Hon. Ward, a Judge of the Superior Court, on 8/8/97.

ATTEST:
CLERK OF COURT:
/s/ L. Moncevicius, Asst. Clerk

It appearing that said defendant should have counsel, the Office of the Public Defender was appointed by the Hon. _____ to represent the defendant and on _____ Public Defender _____ appeared for the defendant.

It appearing that said defendant was a minor, the following person was appointed Guardian ad Litem, by the Honorable _____, a Judge of the Superior Court.

NAME OF GUARDIAN: _____ of _____ (Town)

The defendant was called upon to answer said information/complaint on 8/8/97 and thereupon pleaded:

NOT GUILTY, to Count(s) No. one and two

GUILTY, to Count(s) No. _____

NOLO CONTENDERE, IN WRITING, to Count(s) No. _____

That before the defendant was put to plea on Count(s) No. one and two, (s)he was notified, in the absence of the Court, of the contents of a second part of the Information, charging said defendant with having been previously convicted of the crime(s) of: Cr. Mischief and Tamper with Airport/Equip. on: 3/10/98 at: Enfield, Superior Court.

Whereupon, the Court advised the defendant of his/her constitutional right to a trial by the Court or by the Jury. That the defendant thereupon elected to be tried by the Court on the count(s) to which (s)he had pleaded not guilty. After a full hearing before the Hon. _____, commencing on _____ and concluding on _____, the Court found the defendant:

GUILTY, on Count(s) No. _____

NOT GUILTY, on Count(s) No. _____

GUILTY, ON THE LESSER INCLUDED OFFENSE, on Count(s) No. _____

That the defendant elected to be tried by a Jury, on the count(s) to which (s)he had pleaded not guilty. The defendant elected to be tried by a jury of six and the case was continued onto the Firm Jury Trial List for this Geographical Area. After a full hearing before the Hon. Harleston, commencing on 4/15/98, the case was committed to the jury which returned a verdict of:

GUILTY, on Count(s) No.: * 1 and 2 DATE: 6/5/98 TIME: 11:55 A.M.

It was therefore adjudged by the Court that the defendant was guilty in manner and form as charged in said complaint/information on said counts.

Whereupon, the defendant on 6/10/98 duly filed his/her motion to set aside the verdict. The Court, Harleston, J., having heard the parties on said motion, denied the same on 8/20/98.

NOT GUILTY, on Count(s) No.: _____ DATE: _____ TIME: _____

GUILTY, ON LESSER INCLUDED OFFENSE, on Count(s) No.: one

* Criminal Mischief in the 3rd degree

The Court accepted and ordered recorded said verdict.

The Trial Court Judge (Harleston) therafter deferred the imposition of the sentence on the defendant and ordered that the Adult Probation Department file the required pre-sentence report on or before 8/21/98.

The pre-sentence report having been filed and considered, the Court (Harleston, J.) sentenced the defendant to:

PAY A FINE OF $ _____ on Count(s) No. _____, respectfully, and to stand committed until judgment be complied with.

BE COMMITTED TO THE CUSTODY OF THE COMMISSIONER OF CORRECTIONS, on Count(s) No. * 1 and 2 for a term of one ct. #1 to ´ yr.e/s/, 3 yrs prob. conc. on ct.2 to 8 yrs. e/s/a 18 mos. 5 yrs. prob. at H.C.C/Walker

EXECUTION OF SAID SENTENCE WAS SUSPENDED,

on Count(s) No. two after 18 mos. day(s) /month(s) /year(s) and served on Count(s) No. _____ and the defendant was committed to the care of the Adult Probation Department for a period of 5 yrs. mths/yrs. on Count(s) No. two and three yrs. on count 1

CR97-106221	:	SUPERIOR COURT
CR97-104930	:	JUDICIAL DISTRICT OF
CR97-105048	:	HARTFORD
STATE OF	:	AT ENFIELD
CONNECTICUT	:	MAY 13, 1998
VS.	:	
AUGUSTUS J. SIMMONS	:	

BEFORE: THE HONORABLE PATRICIA HARLESTON, JUDGE

APPEARANCES:

JOHN MALONE, ESQ.
Enfield Superior Court
State's Attorney Office
101 Phoenix Avenue
Enfield, CT, 06082
ATTORNEY FOR THE STATE

AUGUSTUS J. SIMMONS
PRO SE

SHARON NOLL
Certified Shorthand Reporter

* * *

[38](A recess was taken)

THE COURT: The case contesting the taking of the subject property began in 1960 with numerous suits on various points through the years. The dispute eventually reached the Connecticut Supreme Court in 1980, where Mr. Simmons was ruled against. A stipulated judgment had been filed with the court in 1978 settling the case.

The defendant here, Mr. Simmons, moved to have that judgment reopened, and the Supreme Court denied the appeal in 1980.

Mr. Simmons then filed two suits in the U.S. District Court, both of which were dismissed. Both of those dismissals were affirmed in the Second Circuit Court of appeals, and finally, a Petition for Certiorari was denied by the U.S. Supreme Court on [39] October 1, 1981.

Mr. Simmons, then, in February, on February 3, 1984, filed in the trial court a claim for declaratory judgment. Mr. Simmons also sought to void the 1978 judgment settling the case, which was upheld by the Supreme Court in 1980. Your claim was denied by the court, and you appealed that decision to the appellate court.

On May 7, 1985, the appellate court upheld the decision of the trial court on the ground that the record was devoid of any notice to the myriad of interested persons cited in the claim for declaratory judgment. The trial court, therefore, lacked jurisdiction to hear that claim. Therefore, the judgment entered in 1978 and upheld by the Supreme Court in 1980, which settles the issue of ownership of the subject property – that it is the property of Bradley Airport – stands today. You do not own this property. It is the property of Bradley Airport.

Now, all arguments about procedures issued in the taking of the property, compensation, etc. and several others have been litigated in civil court. The issue of ownership has been settled. Those were all civil matters.

Now, the statutes provide that there shall be a superior court for criminal business. That's provided for in

Section 51-180. The statutes provide that a [40] person may be arrested without a warrant by the police for any offense committed in their jurisdiction when the person is taken or apprehended in the act or on the speedy information of others. That is in Section 54-1f. The statutes provide that a judge of the superior court may issue a bench warrant of arrest upon application by a prosecutor if the judge determines that the affidavit accompanying the application shows that there is probable cause to believe that an offense has been committed and that the person complained against committed the offense. Both of these things happened in this case. This is what gives this Court jurisdiction.

Subject matter jurisdiction is the power of a court to hear and adjudicate a legal controversy between the parties that is of the general class of cases to which the proceeding in question belongs. In this case, criminal cases is the general class of cases to which this proceeding belongs.

In personam jurisdiction consists of the power of the court over the person of a party or litigant to adjudicate his legal rights and obligations in the cause pending before the court.

The State has alleged that you committed certain acts on and against the property of another in violation of several criminal statutes. There is nothing in the record which deprives this Court of the [41] power to hear and adjudicate those claims. There is, further, nothing in the record which indicates that you are not a proper defendant to this controversy. There have been no irregularities cited in the manner in which you were brought before

this Court. This Court, therefore, has subject matter and in personam jurisdiction.

All three motions are denied.

* * *

CR97-104930 CR97-105048 CR97-106221	:	SUPERIOR COURT JUDICIAL DISTRICT OF HARTFORD
STATE OF CONNECTICUT	:	AT ENFIELD
VS.	:	AUGUST 20, 1998
AUGUSTUS J. SIMMONS	:	

BEFORE: THE HONORABLE PATRICIA L. HARLESTON, JUDGE

APPEARANCES:

JOHN MALONE, ESQ.
State's Attorney Office
111 Phoenix Avenue,
Enfield, CT 06082
ATTORNEY FOR THE STATE

GEOFFREY NAAB, ESQ.
LaBelle, LaBelle, & Naab, P.C.
295 East Center Street
Manchester, CT 06040
ATTORNEY FOR AUGUSTUS J. SIMMONS

SHARON NOLL
Certified Shorthand Reporter

[2] THE COURT: Good morning.

MR. MALONE: Good morning, your Honor.

THE COURT: Okay.

MR. MALONE: We're ready for posttrial convictions – posttrial proceedings and sentencing on

Augustus Simmons, your Honor, on CR97-104930, 105048, and 106221.

THE COURT: Thank you. All right.

Attorney Naab, I have an – I want to make sure I have everything. I was given a Motion for New Trial, sent to me, and Motion for Judgment of Acquittal.

MR. NAAB: Yes, your Honor.

THE COURT: That's the only two?

MR. NAAB: Yes.

THE COURT: So you want to argue those – obviously, you want to argue those first?

MR. NAAB: Well, I think that's appropriate. I think that's appropriate, your Honor. I am not going to have an awful lot to say in addition to what I put on the paper.

THE COURT: Okay.

MR. NAAB: I presume the issues were discussed at great length during the course of the trial in connection with various objections which were made by both sides to various testimony. The motion for New Trial is based upon the fundamental notion that if the plaintiff is – or, excuse me, the plaintiff – if the [3] defendant is entitled to a trial by a jury of his peers, he is entitled to a fair trial. And a fair trial requires that the jury be entitled to hear or see all of the evidence which is relevant to the charges against the defendant; that the Court excluded a great deal of evidence which was relevant to the charges against the defendant.

Most particularly, the kinds of evidence that were excluded were evidence that went to the history of the transactions involving the land where the fence was that Mr. Simmons cut down, which was relevant to his state of mind in connection with the crimes with which he was charged, in particular, the crime of criminal mischief and criminal trespass and also the crime of tampering with airport property.

Mr. Simmons, as the Court knows, firmly believes that the property is his; that the fence was on his property; that the state had no right to put that fence up. The jury was told that that's what Mr. Simmons believes. The jury was not, however, permitted to see or hear all of the testimony that is relevant to that issue. The jury was put in the position of hearing Mr. Simmons say, Yeah, that was my property; they had no right to put the fence up and very little else on that score. And the State, of course, was permitted to and did, and not improperly, argued to the jury that well, you know Mr. Simmons [4] says that that's what he believes and maybe he believes it in some sense but not in any real sense because the Supreme Court has said that the property doesn't belong to him and, therefore, he can't really believe that. That was the essence of the State's argument to the jury, and the jury obviously saw it the State's way, that the Supreme Court has said that this land belongs to the state; that Mr. Simmons has no right in it and how could he possibly believe that the land is his.

I submit, your Honor, that if the jury had been permitted to hear the entire story, to hear the entire story presented in a chronological and a logical way as we wanted to present it to them, the jury at least would have

heard both sides. But the jury did not hear both sides. The jury did not hear both sides because of all the exhibits and the other testimony that were excluded, and they are listed in my motion. And I don't see any point in going into that any further unless your Honor wants me to.

But that an essence of my claim, whether Mr. Simmons actually believed that the property was his, is relevant on the, to the conviction on the crimes from criminal trespass. An element of criminal trespass is that he knew that he had no right to be on the property. In fact, Mr. Simmons knew – what he knew was that he had every right to be on the [5] property. I am not talking about what the law says. I am talking about what Mr. Simmons knew, what he knew in his head. Because that's the element of the crime. And the crimes of criminal mischief, the statute is stated somewhat differently. It says that he damaged the property without a reasonable belief that he was entitled to do so or the reasonable belief that he had the right to damage it.

Whether Mr. Simmons' belief was reasonable or not is certainly a function of what Mr. Simmons knew, what had gone on, what had transpired in the past to form Mr. Simmons' belief. The jury was not permitted to see or hear the evidence germane to that question.

And, of course, so far as tampering with airport property goes, if it wasn't airport property, at least not in Mr. Simmons' mind, he could not have had the requisite mensa rea for commission of that offense. That certainly shows some light on whether or not he was reasonable in blockading the fence repairers and not cooperating with

the police at the time they came to ask him to get his car off the fence line and then when he refused to do that, get out of his car and be arrested.

So I submit, your Honor, that these issues are relevant on all of the charges of which Mr. Simmons stands convicted.

And the Motion for Judgment of Acquittal, the [6] issue is simply this: although there was some vague testimony by Mr. Gobb, who only started his job 11 weeks before the trial and was not even in Connecticut at the time of any of the incidents involved, although there was some vague testimony by Mr. Gobb about the airport security fence and the airport security perimeter, it is clear from the testimony of Major Lilya, who testified twice, that the fence that Mr. Simmons cut was a National Guard fence. It was not an airport fence. It was a National Guard fence. It was a fence that was put up by the National Guard and reerected by the National Guard after these incidents and was a fence that fenced in a National Guard area or an area that was leased to the National Guard by the State Department of Transportation. It was not part of the airport itself. Certainly, the National Guard fence went around the area that was enclosing the airport, but it was not an airport fence.

I submit there was no credible evidence from which the jury could have found that fence which Mr. Simmons cut was airport property. And, therefore, the conviction on the three counts of tampering with airport property were – or tampering with airways, as it is so quaintly put in the information and in some of the other documents, should not be allowed to stand.

Thank you, your Honor.

[7] THE COURT: Thank you. Attorney Malone.

MR. MALONE: Your Honor, thank you. As relates to the Motion for New Trial, the issue that counsel wished the jury to consider was before them. In any event, as to what Mr. Simmons' belief was, he testified. He was permitted by your Honor to go into a lot of detail about what had happened with the property, the transaction in which he signed the deed over. He signed the agreement and stipulation. That ended the civil matter.

And, in fact, we had to call on rebuttal, as you Honor may recall, the attorney on the other side to rebut some of the outrageous allegations concerning the manner the transaction was handled. What your Honor did exclude was simply items that had been litigated before and litigated to conclusion that resulted in the Supreme Court decision that we all know about in *Simmons v. Wetherall*.

And all that Mr. Naab would like the jury to do is retrace that same tired path that has been traced through the courts for many years and had been concluded by the Supreme Court in its decision. That digression would do nothing constructive to the case other than divert the jury from issues before them, which is guilt or not guilt of Mr. Simmons. It would cause considerable side issues, raise considerable side issues that we may have to respond to, would [8] certainly enlarge and elongate the trial even longer than it was, which was long enough.

I feel, your Honor, that your Honor's decision in limiting the evidence was what your Honor is supposed to do, is to limit the evidence so the jury can fairly

consider the evidence relevant to the case. And that's what the – that's what your Honor did. In fact, I suggest your Honor gave him more than could reasonably be expected in terms of what his claims were, such as they were.

So, your Honor, I don't feel as to the Motion for New Trial there are any grounds for a new trial. He had a fair trial. He had more than a fair trial. He was able to advance claims that simply already had been litigated, that in a civil case he could not have brought up because it would have been res judicata, would have estopped him from bringing them up, and he was able to bring them up in court. So I feel he had ample opportunity to testify and give the jury his belief. And they had that before them. They found it as unreasonable as everybody else does except Mr. Simmons.

As to the Motion for Acquittal, your Honor, as your Honor knows you must take the evidence in the light most favorable to the State's position. Mr. Gobb did testify that that fence was part of the security perimeter, and he testified that as part of [9] the security there's a plan for the airport. That specific fence that goes around the property that is owned by the state and leased to the Air National Guard is part and parcel of the security perimeter of the airport, your Honor. And Mr. Naab may find he is not able to agree with it, but in deciding whether or not acquittal should be granted, your Honor, your Honor has to assume that the jury credited that testimony since they look at the testimony in the light most favorable to the State. That being the case, the State had proved that element beyond a reasonable doubt.

In addition, your Honor, the defendant did produce Mr. Juliano. And you may recall that on cross-examination – it was the former airport director – that I reestablished the same evidence through him in cross-examination. So the jury had all that. And, in any event, by the time that they had the verdict, even if they didn't accept Mr. Gobb's testimony, which your Honor must assume nevertheless that they did accept, so I ask your Honor to deny both motions.

Thank you.

THE COURT: All right. Any –

MR. NAAB: No, your Honor.

THE COURT: Okay. On the Motion for New Trial this was a criminal jury that was impaneled to hear [10] the case on charges of tampering with airport property – several charges that had been brought against Mr. Simmons: criminal mischief in the first degree, criminal trespass in the third degree.

And this jury had no authority to overturn the state's Supreme Court decision which had entered judgment upon the stipulation of the parties that the property belonged to the state.

This jury had no authority to go behind that stipulation and enter issues such as whether the defendant was intoxicated or whether he was coerced or whether he had to stand up against the wall or any of the circumstances as to how that stipulation came about. That was not their job, and they had no authority to do any of these things. That's why it didn't matter whether they heard them because they couldn't do anything with that information.

Mr. Simmons is well aware of the procedures to follow to attack the stipulation and the 1980 Supreme Court case because he has done so. They would be through appeals and other court actions. I believe he had brought an action for declaratory judgment, and he has brought these actions. This, however, was not a court action brought by Mr. Simmons to overturn the stipulated judgment or the 1980 Supreme Court case. This was a criminal case that was brought by the State of Connecticut against Mr. Simmons. And the jury had [11] to decide his guilt or his nonguilt.

Now, who owns the property, of course, was an issue in the tampering with airport property charges. However, this issue is not legally unclear. It is disputed, unclear, unresolved only to Mr. Simmons. The fact that he believes the property to still be his was an unreasonable and still is an unreasonable belief. Mr. Simmons' belief has to be reasonable as you have pointed out. The fact that Mr. Simmons has spent years subsequent to 1980 bringing court actions trying to overturn the 1980 decision is indicative of the fact that he understood the effects of that decision but was not in agreement with it and wants it overturned. Refusing to accept the circumstance does not excuse his actions, and the jury would not have been able to find that.

The jury was made well aware by Mr. Simmons' testimony and by other documents and testimony of other people that it was clear that he did not agree with this. He does not agree with it. He believes the property to be his, and they got that. They understood that. He was very clear, very emotional. It was not feigned at all. It is very clear. It was very clear to everyone that he does

not agree with that decision. But it is also clear that it was an unreasonable decision, and if they had found otherwise, I probably would have had to enter a [12] judgment notwithstanding their verdicts. They were not able to find that. They just simply were not able to find that it was not a reasonable decision or a reasonable position that he has. And he is well aware, as I have stated, of the impact and the effect of that 1980 decision.

He is also well aware of what procedures to go through to attempt to have it overturned. He is very intelligent. He's very knowledgeable about court procedures. He's brought numerous actions, and he knows that's where it is done. He also knows that it is not done by – it can't be overturned by cutting down the fence. So the Motion for New Trial is denied.

With respect to the Motion for Judgment of Acquittal, the Court's opinion is that the evidence from the witnesses did support a ruling by the jury that the fence was part of the security perimeter of the airport. I don't think that was an erroneous conclusion for the jury to reach, that that was part of the security perimeter. The National Guard – or was it the National Guard?

MR. MALONE: Air National Guard.

THE COURT: The Air National Guard was leasing the property from the state. I mean, the fence is between both parts. The fact that they maintain it for the airport, which I think was the testimony, does [13] not make it then not be part of the airway or equipment thereof; landing field, airway, or equipment thereof.

There was sufficient evidence to indicate that this fence was a vital part of the airport and played a vital part of the airport. And the absence of that fence – there was testimony that the absence of that fence and cutting down of a portion of that fence could have interrupted substantially the operation of the airport. So the fence must be important to the airport, part of the operation of that, so I think there was sufficient evidence for the jury to find that. So based, on that, the Motion for Judgment of Acquittal is also denied.

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STATE OF CONNECTICUT *v.* AUGUSTUS J. SIMMONS

(AC 18814)

Lavery, C. J., and Landau and Zarella, Js.

Argued May 10 – officially released May 30, 2000

Defendant's appeal from the Superior Court in the judicial district of Hartford, geographical area number thirteen, *Harleston, J.*

Per Curiam. The judgment is affirmed.